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April 22, 2003

Marlene Dortch,
Secretary,
Federal Communications Commission,
445 12th St., S.W.,
Washington, DC 20554.

Re: Petitions for Protection from Whipsawing on the
US-Philippines Route (IB Docket No. 03-38)
Ex Parte Presentation
Philippine Long Distance Telephone Company ("PLDT")

Dear Ms. Dortch:

This letter responds to the *ex parte* letter filed by MCI on April 16, 2003, in which MCI alleges that PLDT is "continuing to whipsaw MCI" by using "blockage of MCI's traffic as leverage to obtain agreement solely on [PLDT's] terms." MCI's description is both inaccurate and unfair. PLDT has never attempted to "whipsaw" MCI; indeed, the record shows that the opposite is true, with MCI attempting to use the FCC process as leverage in its negotiations with PLDT.

As the Commission is aware, PLDT agreed to an interim termination rate agreement with MCI for the period February 28 through March 31 on terms favorable to MCI ("Interim Agreement"). PLDT did so in order to give the parties time to negotiate a final agreement, and because MCI had indicated a willingness to do so in good faith under parameters that were mutually acceptable. The fact that PLDT opened its direct circuits to MCI on February 28, on terms favorable to MCI, refutes any suggestion that PLDT is using "blockage" as "leverage" against MCI.

MCI fully understood that its direct circuits with PLDT could not remain open indefinitely absent an agreement, as reflected by the term of the Interim Agreement itself. Further, after it entered the Interim Agreement, PLDT was ordered on March 12 by the Philippine NTC to close direct circuits to U.S. carriers that do not agree to pay Filipino carriers a fair and reasonable rate. Believing that such an agreement might be close at hand, PLDT extended as far as it thought it reasonably could, until April 15, without closing its direct circuits with MCI, to give the parties yet more time to reach agreement. If PLDT had sought "leverage" over MCI, it would not have opened direct

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circuits on February 28 in the first place, and it certainly would not have kept direct circuits open until April 15.

PLDT and MCI have held numerous discussions in an effort to reach a compromise. Contrary to MCI's characterization, PLDT has not insisted on an agreement "solely on [its] terms." The parties were, indeed, close to reaching an agreement, but in the end it was the Commission's own order, in particular its prohibition of ISR arrangements, that stood in the way of agreement. With the negotiations deadlocked, no agreement on price, no prospect of payment, and the effect of the NTC order, PLDT could not continue to provide direct connections to MCI.

In light of this negotiating history, it is, to say the least, disappointing that MCI would choose to characterize PLDT's efforts to reach agreement as being in bad faith. If anyone has proceeded in bad faith, it is MCI, by taking advantage of the Interim Agreement to get as much commercial advantage as it could without ever being willing fully to settle its dispute with PLDT.

While MCI shamelessly casts itself as the victim, the fact is that MCI has benefited enormously from the interim arrangements that were made, collecting fees from its customers for terminating traffic to the Philippines, while not paying PLDT for this service. MCI currently owes PLDT several million dollars for termination services already rendered, including more than \$3.5 million for services rendered prior to February 1, and there is no telling when such payments will be made.

MCI's continued effort to use the power of the FCC as leverage in private termination rate negotiations should not be countenanced. As PLDT consistently has told MCI, PLDT remains open at all times to continue efforts to negotiate in good faith a mutually acceptable termination rate agreement. It is apparent, however, that the FCC Order requiring ISP arrangements is a significant impediment to the parties resolving this matter.

Respectfully submitted,

PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY

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